

**U.S. ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

ADMINISTRATIVE SETTLEMENT AGREEMENT

In the Matter of:

General Power Limited, Inc.

Respondent

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) **MSEB AED # 7141**
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This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA), and General Power Limited, Inc., a Florida Corporation, located at 8235 NW 64th Street #2, Miami, Florida (Respondent) regarding compliance by Respondent with the requirements of Section 203 and 213 of the Clean Air Act (Act), 42 U.S.C. §§ 7522 and 7547, and the regulations promulgated thereunder at 40 C.F.R. Parts 89 and 90.

Purpose

1. The purpose of this Administrative Settlement Agreement (Agreement) is to resolve any and all claims by EPA under the Act and Parts 89 and 90 arising out of the importation of 170 nonroad engines described in Attachment I and to ensure that future violations are avoided.

Definitions:

2. For the purposes of this Agreement, the following definitions apply:
 - A. *Certified engine*: A “certified engine” is a nonroad engine that was built after the applicable effective dates of the regulations at Parts 89 or 90 and that is covered by a Certificate of Conformity.
 - B. *Dates of the Applicable Regulations*: The term “dates of the applicable regulations” for a nonroad compression ignition engine means the date after which

the certification requirement applies to the engine, as defined in Table 2 of 40 C.F.R. § 89.112. For nonroad spark-ignition engines rated at or below 19 kW, the applicable effective date is January 1, 1997.

- C. *Uncertified engine*: An “uncertified engine” is a nonroad engine built after the applicable effective date of the regulations but which is not covered by a Certificate of Conformity.
- D. *This matter*: As used in this Agreement, “this matter” means the Respondent’s importation of the Subject Engines identified in Attachment I and any civil liability that may apply to violations of the Clean Air Act and implementing regulations at 40 C.F.R. Parts 89 and 90.
- E. *Certificate of Conformity*: A “Certificate of Conformity” means the document issued by EPA to a manufacturer under 40 C.F.R. § 89.105, for compression ignition engines, or 40 C.F.R. § 90.108 for spark ignition engines, after EPA has determined that the manufacturer’s application is complete and that the engine family meets the requirements of 40 C.F.R. Parts 89 or 90 and the Clean Air Act. Issuance of the Certificate of Conformity permits production of engines built in accordance with the manufacturer’s application provided that the production is within the period during which the Certificate of Conformity is valid.
- F. *Subject engines*: The term “Subject Engines” means the engines whose model numbers, build dates and invoice numbers are listed in Attachment I.

Statutory and Regulatory Authority:

- 3. Sections 203(a) and 213(d) of the Clean Air Act, 42 U.S.C. §§ 7542(a) and 7547(d), prohibit the sale, offering for sale, introduction, or delivery for introduction into commerce, or the importation of any nonroad vehicle or engine after the applicable effective date of the regulations unless such vehicle or engine is certified.

4. 40 C.F.R. §§ 89.1003(a)(1)(ii) prohibits any person from importing into the United States any new nonroad compression ignition engine manufactured after the applicable effective date of the regulations unless such engine is a certified engine.
5. 40 C.F.R. §§ 89.1003(b)(4) requires nonroad vehicle and equipment manufacturers to use certified compression ignition engines in vehicles and equipment manufactured after the effective date.
6. 40 C.F.R. §§ 89.2 defines a nonroad vehicle or equipment manufacturer as any person engaged in the manufacturing or assembling of new nonroad vehicles or equipment, or importing such vehicles or equipment for resale, or a person acting for, and under the control of such person.
7. 40 C.F.R. §§ 89.110 requires the original engine manufacturer to affix, at the time of manufacture of a certified compression ignition engine, a permanent and legible label which identifies the nonroad engine and provides the information specified in that section, including a statement that the engine is a certified engine. The label must be legible and readily visible to the average person after the engine is installed in the equipment.
8. 40 C.F.R. § 90.1(a) defines the applicability of 40 C.F.R. Part 90 regulations to nonroad spark-ignition engines and vehicles that have a gross power output at or below 19 kilowatts and that are used for any purpose.
9. 40 C.F.R. § 90.1003(a)(1)(ii) prohibits any person from importing into the United States any nonroad spark-ignition engine manufactured after the applicable effective date of the regulations, unless such engine is covered by a certificate of conformity.
10. 40 C.F.R. §§ 90.3 defines a nonroad vehicle manufacturer as any person engaged in the manufacturing or assembling of new nonroad vehicles, or importing such vehicles or equipment for resale, or a person acting for, and under the control of such person in connection with the distribution of such vehicles.

11. 40 C.F.R. § 90.1003(a)(4)(ii) prohibits the sale, introduction, or delivery into commerce by engine manufacturer of a nonroad spark-ignition engine manufactured after the applicable effective date of the regulations, unless an emission label is affixed to the engine.
12. 40 C.F.R. § 90.114 requires the engine manufacturer to affix, at the time of manufacture of a certified spark-ignition engine, a permanent and legible label identifying each nonroad engine. The label must be legible and readily visible to the average person after the engine is installed in the equipment, must contain the content required by 40 C.F.R. § 90.114 and must be attached in such a manner that it cannot be removed without destroying or defacing the label.

Background

13. Respondent imported equipment containing the Subject Engines in three shipments. The first shipment was imported by Respondent into Port Everglades, Florida on August 9, 2005, and consisted of sixty-six generators containing the Subject Engines which were not properly labeled or certified. The generators in the first shipment were detained by U.S. Customs and Border Protection (Customs) but were subsequently released. Thirty-one generators are still in the possession of Respondent and the remainder were exported. The second shipment was imported by Respondent into Miami, Florida in July of 2005 and consisted of twenty-six generators containing Subject Engines which were not properly labeled or certified, twenty-two of which were subsequently sold in the United States with Respondent in the possession of the one remaining generator. The third shipment was imported by Respondent into Port Everglades, Florida, on January 18, 2006, and consisted of seventy-eight generators containing the Subject Engines. On January 27, 2006, Customs seized the equipment containing the Subject Engines in the third shipment described in Paragraph 9 of this Agreement, at Port Everglades, Florida, where it is presently being held because the Subject Engines were not properly certified or labeled.

14. Respondent is the importer of the Subject Engines.
15. The Subject Engines and nonroad equipment were manufactured after the Dates of the Applicable Regulations. As a consequence, certified and labeled engines were required to be used in the nonroad equipment.
16. The Subject Engines listed in Attachment I are not certified engines, and do not have affixed the certification label required by 40 C.F.R. §§ 89.110 or 90.114.

Terms of Agreement

17. Within 60 days of the date of this Agreement, Respondent shall submit proof that each of the Subject Engines noted as "yes" in the **Required to Export** column in Attachment I, has been exported to a location outside the North American continent.
18. All submissions shall be sent to EPA at the following address:

Marcia S. Ginley, Attorney
U.S. Environmental Protection Agency
Mobile Sources Enforcement Branch
12345 West Alameda Parkway, Suite 214
Denver, CO 80228

facsimile: (303) 236-9514

19. Respondent shall pay to the United States a civil penalty of Fifty Thousand Four Hundred Sixty-one Dollars (\$50,461) within 30 calendar days of the effective date of this Agreement. Late payment of the civil penalty is subject to interest and fees as specified in 31 U.S.C. § 3717. Respondent agrees to pay the amount by certified check or cashier's check payable to the "United States of America," and to mail the payment to:

U.S. Environmental Protection Agency
Washington Accounting Operations
P.O. Box 360277M
Pittsburgh, Pennsylvania 15251
ATTN: AED/MSEB # 7141

Simultaneously, a photocopy of the check shall be mailed to EPA at the address specified in Paragraph 18 or faxed to (303) 236-9514 to the attention of Marcia S. Ginley. Such check shall be identified with the case number and Respondent's name.

General Provisions

20. The effective date of this Agreement is the date that EPA executes the Agreement and provides a copy of the executed Agreement to the Respondent.
21. Respondent hereby represents that the individual or individuals executing this Agreement on behalf of Respondent are authorized to do so on behalf of Respondent and that such execution is intended and is sufficient to bind Respondent, its agents, assigns, or successors.
22. Notwithstanding any other provision of this agreement, upon Respondent's failure to perform, or default of or failure to comply with any terms of this Agreement, EPA may refer this matter to the United States Department of Justice to recover civil penalties pursuant to Section 205 of the Act, 42 U.S.C. § 7524, and pursue any other remedies available to it. Respondent specifically agrees that in the event of such default or failure to comply, EPA may proceed in an action based on the original claim of violation of the Act and Parts 89 or 90. Respondent expressly waives its right to assert that such action is barred by any applicable statute of limitation, *see* 28 U.S.C. § 2462.
23. The Effect of Settlement described in Paragraph 26 of this Agreement is conditioned upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to EPA under this Agreement, including but not limited to representations regarding importations contained in Attachment I, and the prompt and complete remediation of any violations in accordance with this Agreement.

Stipulated Penalties:

24. For failure to comply with the terms of this Agreement on a timely basis Respondent shall pay stipulated penalties to the United States as follows:
 - A. For failure to timely pay the penalty, or provide proof of such payment, pursuant to Paragraph 19, \$250 per day.
 - B. For failure to timely export the Subject Engines, or provide proof of such

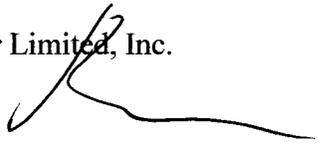
exportation, pursuant to Paragraph 17, \$250 per day.

25. All stipulated penalties under Paragraph 24 of this Agreement shall begin to accrue on the day after performance is due, and shall continue to accrue until the day compliance is achieved. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Agreement. All stipulated penalties shall be paid in accordance with Paragraph 19 and shall be paid within five days of written demand by EPA. Stipulated penalties shall not be construed as prohibiting, altering, or in any way limiting the ability of EPA from seeking any other remedy or sanction available by virtue of Respondent's violation of this Agreement or of the statutes or regulations upon which the Agreement is based.

Effect of Agreement

26. Upon completion of the terms of this Agreement, the alleged violations described in this Agreement shall be considered resolved.

The following agree to the terms of this Agreement:

General Power Limited, Inc.
By: 
(name) LUIS E. LOPEZ
(title) PRESIDENT

8/02/06
Date

U.S. Environmental Protection Agency
In the Matter of General Power Limited, Inc.
AED/ MSEB # 7141

By:  _____ Date 8.10.06

Adam M. Kushner,
Director
Air Enforcement Division
Office of Enforcement and Compliance Assurance

ATTACHMENT I

In the Matter of General Power, Inc.

Uncertified and Unlabeled Engines –Subject Engines

SHIPMENT #1:

Item	Model	Build Date	Invoice	Fuel Type	Required to Export?
1	KDE6500T	May 2005	GP-1040-2005	Diesel	yes
2	KDE6500T+ATS	May 2005	Stock	Diesel	yes
3	KDE6500T+ATS	May 2005	Stock	Diesel	yes
4	KDE6500T+ATS	May 2005	Stock	Diesel	yes
5	KDE6500T+ATS	May 2005	Stock	Diesel	yes
6	KDE6500T+ATS	May 2005	Stock	Diesel	yes
7	KDE6500T+ATS	May 2005	Stock	Diesel	yes
8	KDE6500T+ATS	May 2005	Stock	Diesel	yes
9	KDE6500T+ATS	May 2005	Stock	Diesel	yes
10	KDE6500T+ATS	May 2005	Stock	Diesel	yes
11	KDE6500T+ATS	May 2005	Stock	Diesel	yes
12	KDE6500T+ATS	May 2005	Stock	Diesel	yes
13	KDE6500T+ATS	May 2005	Stock	Diesel	yes
14	KDE6500T+ATS	May 2005	Stock	Diesel	yes
15	KDE6500T+ATS	May 2005	Stock	Diesel	yes
16	KDE6500T+ATS	May 2005	Stock	Diesel	yes
17	KDE6500T+ATS	May 2005	Stock	Diesel	yes
18	KDE6500T+ATS	May 2005	Stock	Diesel	yes
19	KDE6500T+ATS	May 2005	Stock	Diesel	yes
20	KDE6500T+ATS	May 2005	Stock	Diesel	yes
21	KDE6500T+ATS	May 2005	Stock	Diesel	yes
22	KDE6500T+ATS	May 2005	Stock	Diesel	yes
23	KDE6500T+ATS	May 2005	Stock	Diesel	yes
24	KDE6500T+ATS	May 2005	Stock	Diesel	yes
25	KDE6500T+ATS	May 2005	Stock	Diesel	yes
26	KDE6500T+ATS	May 2005	Stock	Diesel	yes
27	KDE6500T+ATS	May 2005	Stock	Diesel	yes
28	KDE6500T+ATS	May 2005	Stock	Diesel	yes
29	KDE6500T+ATS	May 2005	Stock	Diesel	yes
30	KDE6500T+ATS	May 2005	Stock	Diesel	yes
31	KDE6500T+ATS	May 2005	Stock	Diesel	yes
32	KDE6500T+ATS	May 2005	Stock	Diesel	yes
33	KDE6500T+ATS	May 2005	GP-1008-2005	Diesel	yes
34	KDE6500T+ATS	May 2005	GP-1008-2005	Diesel	yes
35	KDE6500T3+ATS	May 2005	GP-1008-2005	Diesel	yes
36	KDE6500T3+ATS	May 2005	GP-1008-2005	Diesel	yes
37	KDE6500T3+ATS	May 2005	GP-1008-2005	Diesel	yes
38	KDE6500T3+ATS	May 2005	GP-1008-2005	Diesel	yes
39	KDE6500T3+ATS	May 2005	GP-1008-2005	Diesel	yes
40	KDE6500T3+ATS	May 2005	GP-1008-2005	Diesel	yes
41	KDE6500T3+ATS	May 2005	GP-1008-2005	Diesel	yes
42	KDE6500T3+ATS	May 2005	GP-1008-2005	Diesel	yes
43	KDE6500T3+ATS	May 2005	GP-1008-2005	Diesel	yes
44	KDE6500T3+ATS	May 2005	GP-1008-2005	Diesel	yes
45	KDE6500T3+ATS	May 2005	GP-1008-2005	Diesel	yes
46	KDE6500T3+ATS	May 2005	GP-1008-2005	Diesel	yes

47	KDE6500T3+ATS	May 2005	GP-1008-2005	Diesel	yes
48	KDE6500T3+ATS	May 2005	GP-1008-2005	Diesel	yes
49	KDE6500T3+ATS	May 2005	GP-1008-2005	Diesel	yes
50	KDE6500T3+ATS	May 2005	GP-1008-2005	Diesel	yes
51	KDE6500T3+ATS	May 2005	GP-1008-2005	Diesel	yes
52	KDE6500T3+ATS	May 2005	GP-1008-2005	Diesel	yes
53	KDE6500T3+ATS	May 2005	GP-1008-2005	Diesel	yes
54	KDE6500T3+ATS	May 2005	GP-1008-2005	Diesel	yes
55	KDE6500T3+ATS	May 2005	GP-1008-2005	Diesel	yes
56	KDE6500T3+ATS	May 2005	GP-1008-2005	Diesel	yes
57	KDE6500T3+ATS	May 2005	GP-1008-2005	Diesel	yes
58	KDE6500T3+ATS	May 2005	GP-1008-2005	Diesel	yes
59	KDE6500T3+ATS	May 2005	GP-1008-2005	Diesel	yes
60	KDE6500T3+ATS	May 2005	GP-1008-2005	Diesel	yes
61	KDE6500T3+ATS	May 2005	GP-1008-2005	Diesel	yes
62	KDE6500T3+ATS	May 2005	GP-1008-2005	Diesel	yes
63	KDE6500T3+ATS	May 2005	GP-1008-2005	Diesel	yes
64	KDE6500T3+ATS	May 2005	GP-1008-2005	Diesel	yes
65	KDE6500T3+ATS	May 2005	GP-1008-2005	Diesel	yes
66	KDE6500T3+ATS	May 2005	GP-1008-2005	Diesel	yes

SHIPMENT #2:

Item	Model	Build Date	Invoice	Fuel Type	Required to Export?
1	KDE19STA+ATS	July 2005	GP-1085-2005	Diesel	no
2	KDE19STA+ATS	July 2005	GP-1071-2005	Diesel	no
3	KDE19STA+ATS	July 2005		Diesel	yes
4	KDE19STA+ATS	July 2005	GP-1066-2005	Diesel	no
5	KDE19STA+ATS	July 2005	GP-1066-2005	Diesel	no
6	KDE19STA+ATS	July 2005	GP-1066-2005	Diesel	no
7	KDE19STA+ATS	July 2005	GP-1066-2005	Diesel	no
8	KDE19STA+ATS	July 2005	GP-1066-2005	Diesel	no
9	KDE19STA+ATS	July 2005	GP-1066-2005	Diesel	no
10	KDE19STA+ATS	July 2005	GP-1066-2005	Diesel	no
11	KDE19STA+ATS	July 2005	GP-1066-2005	Diesel	no
12	KDE19STA+ATS	July 2005	GP-1066-2005	Diesel	no
13	KDE19STA3+ATS	July 2005	GP-1066-2005	Diesel	no
14	KDE19STA3+ATS	July 2005	GP-1039-2005	Diesel	yes
15	KDE19STA3+ATS	July 2005	GP-1039-2006	Diesel	yes
16	KDE19STA3+ATS	July 2005	GP-1039-2007	Diesel	yes
17	KDE30ST	July 2005	GP-1066-2005	Diesel	no
18	KDE30ST	July 2005	GP-1066-2005	Diesel	no
19	KDE30ST	July 2005	GP-1066-2005	Diesel	no
20	KDE30ST	July 2005	GP-1066-2005	Diesel	no
21	KDE30ST	July 2005	GP-1066-2005	Diesel	no
22	KDE30ST	July 2005	GP-1066-2005	Diesel	no
23	KDE30ST	July 2005	GP-1066-2005	Diesel	no
24	KDE35ST	July 2005	GP-1066-2005	Diesel	no
25	KDE35ST	July 2005	GP-1066-2005	Diesel	no
26	KDE35ST	July 2005	GP-1066-2005	Diesel	no

SHIPMENT #3:

Item	Model	Serial #	Build Date	Fuel Type	Required to Export?
1	KGE2000Ti	40360633	Sept-Oct 2005	Gasoline	yes

2	KGE2000Ti	40660108	Sept-Oct 2005	Gasoline	yes
3	KGE2000Ti	50562241	Sept-Oct 2005	Gasoline	yes
4	KGE2000Ti	50661105	Sept-Oct 2005	Gasoline	yes
5	KGE2000Ti	50661861	Sept-Oct 2005	Gasoline	yes
6	KGE2000Ti	50661984	Sept-Oct 2005	Gasoline	yes
7	KGE2000Ti	50662569	Sept-Oct 2005	Gasoline	yes
8	KGE2000Ti	50663819	Sept-Oct 2005	Gasoline	yes
9	KGE2000Ti	50761056	Sept-Oct 2005	Gasoline	yes
10	KGE2000Ti	50761317	Sept-Oct 2005	Gasoline	yes
11	KGE2000Ti	50761321	Sept-Oct 2005	Gasoline	yes
12	KGE2000Ti	50761415	Sept-Oct 2005	Gasoline	yes
13	KGE2000Ti	50761422	Sept-Oct 2005	Gasoline	yes
14	KGE2000Ti	50761427	Sept-Oct 2005	Gasoline	yes
15	KGE2000Ti	50761437	Sept-Oct 2005	Gasoline	yes
16	KGE2000Ti	50761459	Sept-Oct 2005	Gasoline	yes
17	KGE2000Ti	50761509	Sept-Oct 2005	Gasoline	yes
18	KGE2000Ti	50761617	Sept-Oct 2005	Gasoline	yes
19	KGE2000Ti	50761621	Sept-Oct 2005	Gasoline	yes
20	KGE2000Ti	50761660	Sept-Oct 2005	Gasoline	yes
21	KGE3500Ti	51106047	Sept-Oct 2005	Gasoline	yes
22	KGE3500Ti	510602032	Sept-Oct 2005	Gasoline	yes
23	KGE3500Ti	510602031	Sept-Oct 2005	Gasoline	yes
24	KGE3500Ti	511060198	Sept-Oct 2005	Gasoline	yes
25	KGE3500Ti	511060202	Sept-Oct 2005	Gasoline	yes
26	KGE3500Ti	511060208	Sept-Oct 2005	Gasoline	yes
27	KGE3500Ti	510602052	Sept-Oct 2005	Gasoline	yes
28	KGE3500Ti	510602049	Sept-Oct 2005	Gasoline	yes
29	KGE3500Ti	50802104	Sept-Oct 2005	Gasoline	yes
30	KGE3500Ti	510602051	Sept-Oct 2005	Gasoline	yes
31	KGE3500Ti	510601484	Sept-Oct 2005	Gasoline	yes
32	KGE3500Ti	50902687	Sept-Oct 2005	Gasoline	yes
33	KGE3500Ti	5010376	Sept-Oct 2005	Gasoline	yes
34	KGE3500Ti	5080185	Sept-Oct 2005	Gasoline	yes
35	KGE3500Ti	51063225	Sept-Oct 2005	Gasoline	yes
36	KGE3500Ti	510601379	Sept-Oct 2005	Gasoline	yes
37	KGE3500Ti	50903553	Sept-Oct 2005	Gasoline	yes
38	KGE3500Ti	510601482	Sept-Oct 2005	Gasoline	yes
39	KGE3500Ti	50101367	Sept-Oct 2005	Gasoline	yes
40	KGE3500Ti	510601601	Sept-Oct 2005	Gasoline	yes
41	KDE12STA	N/A	Sept-Oct 2005	Diesel	yes
42	KDE12STA	N/A	Sept-Oct 2005	Diesel	yes
43	KDE12STA	N/A	Sept-Oct 2005	Diesel	yes
44	KDE12STA	N/A	Sept-Oct 2005	Diesel	yes
45	KDE12STA	N/A	Sept-Oct 2005	Diesel	yes
46	KDE12STA	N/A	Sept-Oct 2005	Diesel	yes
47	KDE12STA	N/A	Sept-Oct 2005	Diesel	yes
48	KDE12STA	N/A	Sept-Oct 2005	Diesel	yes
49	KDE12STA	N/A	Sept-Oct 2005	Diesel	yes
50	KDE12STA	N/A	Sept-Oct 2005	Diesel	yes
51	KDE12STA	N/A	Sept-Oct 2005	Diesel	yes
52	KDE12STA	N/A	Sept-Oct 2005	Diesel	yes
53	KDE12STA3	N/A	Sept-Oct 2005	Diesel	yes
54	KDE12STA3	N/A	Sept-Oct 2005	Diesel	yes
55	KDE12STA3	N/A	Sept-Oct 2005	Diesel	yes

56	KDE12STA3	N/A	Sept-Oct 2005	Diesel	yes
57	KDE12STA3	N/A	Sept-Oct 2005	Diesel	yes
58	KDE12STA3	N/A	Sept-Oct 2005	Diesel	yes
59	KDE12STA3	N/A	Sept-Oct 2005	Diesel	yes
60	KDE12STA3	N/A	Sept-Oct 2005	Diesel	yes
61	KDE12STA3	N/A	Sept-Oct 2005	Diesel	yes
62	KDE12STA3	N/A	Sept-Oct 2005	Diesel	yes
63	KDE19STA	N/A	Sept-Oct 2005	Diesel	yes
64	KDE19STA	N/A	Sept-Oct 2005	Diesel	yes
65	KDE19STA	N/A	Sept-Oct 2005	Diesel	yes
66	KDE19STA	N/A	Sept-Oct 2005	Diesel	yes
67	KDE19STA	N/A	Sept-Oct 2005	Diesel	yes
68	KDE19STA	N/A	Sept-Oct 2005	Diesel	yes
69	KDE19STA	N/A	Sept-Oct 2005	Diesel	yes
70	KDE19STA	N/A	Sept-Oct 2005	Diesel	yes
71	KDE19STA3	N/A	Sept-Oct 2005	Diesel	yes
72	KDE19STA3	N/A	Sept-Oct 2005	Diesel	yes
73	KDE19STA3	N/A	Sept-Oct 2005	Diesel	yes
74	KDE19STA3	N/A	Sept-Oct 2005	Diesel	yes
75	KDE19STA3	N/A	Sept-Oct 2005	Diesel	yes
76	KDE19STA3	N/A	Sept-Oct 2005	Diesel	yes
77	KDE19STA3	N/A	Sept-Oct 2005	Diesel	yes
78	KDE19STA3	N/A	Sept-Oct 2005	Diesel	yes